

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

STANLEY BOSTITCH, A DIVISION OF
STANLEY WORKS

Employer

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 64, AFL-CIO

Petitioner

Case 1-RC-21406

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer is engaged in the manufacture and distribution of fasteners, staples, and related products. The Petitioner seeks to represent a bargaining unit of approximately 27 warehouse employees at the Employer's East Greenwich, Rhode Island facility. The Employer takes the position that only a wall-to-wall unit, which would include employees working in the warehouse,¹ staples, pneumatic, home and office, facilities, nails, and maintenance departments, including all plant clericals and group leaders, and would total approximately 610 employees, is appropriate.² The Employer also contends that employees in the World Parts Center, and export and domestic customer service, as well as the receiving and returns clerks,³ work in the warehouse on a regular basis and, therefore, should, in any event, be included in the petitioned-for warehouse bargaining unit.

FACTS

The Employer's East Greenwich, Rhode Island facility manufactures fastening devices and related products such as staples, nails, pneumatic tools,⁴ and consumer products such as staplers. The facility consists of two levels, the first of which measures approximately 775,000 square feet. Most of the manufacturing functions are performed on the first floor of the facility, which also contains a small office area and the warehouse. A wall separates the warehouse from the manufacturing area. The second floor consists of office space, box making devices, and a dryer oven.

Six business areas or departments operate within the Employer's East Greenwich facility. These include staples, pneumatics, home and office, nails, warehouse, and facilities.⁵ In addition, the World Parts Center, consisting of approximately 7-10 employees who are situated within the warehouse, handles repairs orders. Approximately six export and domestic customer service employees, who process customer orders and billing, also are based in the warehouse.

John Trani is the Employer's chief executive officer. James Finley, the division group president, reports to Trani. George Mayes is the director of operations.⁶ Pat Tod, the director of human resources, reports to Jim Finley and to Mark Matthew, vice president of the Employer's

¹ The warehouse is also referred to in the record as the Central Distribution Center, Distribution Center, and Shipping Department.

² According to the Employer, the approximate breakdown of employees, by business area or department, is as follows: 220 in staples, 140 in pneumatics, 140 in home and office, 60 in nails, 30 in the warehouse and 20 in facilities or maintenance.

³ The record indicates that returns is a division of the pneumatics business unit.

⁴ According to the Employer's plant manager, Jerry Linzey, a pneumatic tool is typically hooked up to an air compressor and is used to drive nails and staples.

⁵ The facilities department performs maintenance functions for all of the departments.

⁶ The record did not indicate to whom Mayes reports.

parent company. Jerry Linzey, the plant manager, reports to Mayes. The warehouse manager, Brian Wallace, reports to Linzey. Ron Crompton is the day supervisor in the warehouse. The other supervisors include Paul Jakowski (staples), Tom Magnum (pneumatics), Pete Anderson (home and office), Wayne Morgan (facilities) and Kevin Dugan (nails).⁷ Ron Cellucci manages employees in the World Parts Center.⁸ Various departments, including the warehouse, also employ group leaders.

Employees in each of the production departments (staples, home and office, pneumatics, and nails) manufacture that department's products. Once each production department has manufactured its product and packed it into boxes, employees in that department "palletize" and shrink-wrap it, and then prepare or "stage" it for pick up by the warehouse. In performing these operations, approximately 22 of the 220 staples department employees operate forklifts, as do about 14 of the 140 pneumatics department employees, 14 of the 140 home and office department employees, and 6 of the 60 nails department employees.

The facilities department employees are responsible for the maintenance of the entire facility and the heavy duty equipment. They are journeymen who, in addition to operating forklifts, also do plumbing, electrical work, and other skilled maintenance.

Warehousepersons (the petitioned-for unit)

Warehouse employees have one of two job titles: warehouseperson or senior warehouseperson.⁹ As described below, employees in both positions perform daily order picking and packing of all UPS, truck, and customer orders; unload and restock factory shipments; restock vendor shipments; receive customer returns; label and stencil packages after picking; fill out truck bills of lading; shrink wrap and load pallets; and perform the annual inventory total count, weekly cycle counts of products, and discrepancy counts, as assigned.

Warehousepersons receive customer orders via a centralized computer system which prints out a copy of the order in the warehouse. A receiver from the warehouse drives a train¹⁰ around the first floor of the facility, normally on a more or less fixed schedule, to pick up the

⁷ The parties did not stipulate that Crompton or any of the other five supervisors is a supervisor within the meaning of Section 2(11) of the Act.

⁸ Plant Manager Linzey testified that, until about four months ago, he supervised the World Parts Center.

⁹ According to job descriptions provided by the Employer, in addition to the job duties they share with the warehousepersons, the senior warehousepersons "supervise" up to three warehousepersons, which involves scheduling and assigning work, resolving personnel problems, and insuring adequate staffing in the department. Neither party, however, took the position that senior warehousepersons should be excluded from the unit as statutory supervisors, or on any other basis.

¹⁰ Linzey compared a train to a luggage carrier that is used on an airport tarmac. It is driven in a sitting position and transports orders that have been placed onto four or five flatbed trailers that comprise part of the train. The driver must have a motor vehicle license.

staged product. The train is driven around the facility in a loop, originating in the warehouse and first picking up pneumatic assembly or pneumatic tools, then home and office products, then staples, and then returning to the warehouse. Typically, either a warehouse employee or an employee from the staple, pneumatic, or home and office department operates a forklift to place the product on the train. If material must be expedited through the factory, a warehouse employee and a production employee may work together to load the product onto the train. In this case, a manager might contact another manager (or an employee might contact another employee) to request assistance.

Once the receiver returns the train to the warehouse, the product is "received in" on (i.e., entered into) a radio frequency terminal, the bar codes for the products are scanned into the computer system, and the skids or pallets containing the products are removed from the train using a forklift. If a customer has purchased an entire skid or pallet of a particular product, the shrink wrap remains on the pallet. If, on the other hand, a customer purchases less than an entire skid of a particular product, the warehouseperson will remove the shrink wrap from skids that were transported from the production floor, "pick" (i.e., gather together) the customer's order, load it onto a skid, and then shrink wrap it. In either instance, the computer indicates where in the warehouse each product is to be stored until it is ready for shipment to the customer. The receiver then uses a piece of equipment called a stand-up high-rise to place the shrink-wrapped pallets in the specified locations.

In preparing an order for shipping, a warehouseperson drives a forklift to the warehouse location specified by the radio frequency terminal and scans the bar code on the pallet.¹¹ The radio frequency terminal then tells the warehouseperson what to do with the selected pallet. At that point, a label is scanned and placed on the pallet to identify the customer to whom the product is being sent. Finally, the pallet is loaded onto a truck and sent to its destination.

In addition to the finished goods that are manufactured at the East Greenwich facility, the warehouse employees at the Employer handle finished goods that come from various international and domestic sources.¹² Each delivery of such outside goods has already been assigned a purchase order number, which is entered into the radio frequency terminal. The radio frequency terminal tells the warehouse employee, as with products manufactured internally, where the item is to be placed in the warehouse. Having stored the product, the warehouseperson then follows the same procedure as for internally-manufactured goods.

¹¹ The bar codes are contained on "license plates" that have been attached to each pallet.

¹² The parties were unable to agree about what percentage of the finished products in the warehouse are produced at the East Greenwich facility, and what percentage are produced elsewhere. The Employer maintains that approximately 25 percent of the warehouse goods are produced outside of the East Greenwich facility, while the Petitioner's witness, warehouseperson Antonio Lima, testified that up to 60 percent of the finished products contained in the warehouse are produced by external sources.

Customer Service Employees

Employees in export and domestic customer service work in office cubicles that are located in the warehouse.¹³ They sit at desks equipped with computers and telephones. They spend the majority of their time processing customer orders, i.e., "waiving" the orders (transferring them to paper), assembling them, and preparing them to be picked by the warehouse employees. Approximately 2-3 times per day, they go to the warehouse and pick a small order which must get out right away. The customer service representatives spend up to fifteen minutes at a time picking and packing small orders for customers. In addition, they spend 6-7 hours at the end of the month assisting in the warehouse, scanning individual packages on the UPS line (as they come down the conveyor belt), and loading them into a trailer, as well as "piece picking," i.e., preparing orders by locating items in the warehouse and packing them into a box. They do not drive forklifts or process orders via radio frequency. These employees receive direct supervision from Debbie Carpenter, who reports to Brian Wallace, the warehouse manager.

Kristen Johnston,¹⁴ who has been a customer service representative since December 2000, and who previously worked for about ten months in the warehouse, has also assisted in the warehouse on approximately three occasions during 2001, for 5-6 hours each time. In addition, she worked in the warehouse throughout the week of the representation hearing.

World Parts Center

The Employer maintains that seven World Parts Center employees routinely work in the warehouse and, therefore, should be included in the petitioned-for bargaining unit. Their primary function is to handle repair orders. As such, they do not face the same end-of-month deadlines as the warehouse employees, because the handling of repair orders does not affect the Employer's sales budget in the way that filling customer orders does. The record indicates that some (unspecified) number of World Parts Center employees work in the warehouse one day per month, almost every month, for a total of 5-6 hours per employee. When working in the warehouse, these employees perform essentially the same work as the customer service representatives do when they assist in the warehouse. The World Parts Center employees are supervised by Ron Cellucci.

Receiving Clerk and Returns Clerk

According to the Employer, the receiving clerk, Joel Lewis, and the returns clerk, Denise Boucher, both occasionally assist in the warehouse, as well. During the year 2001, Lewis has

¹³ A second group of domestic customer service representatives, who actually take the customer orders, work in an office space on the second level of the facility. There is no evidence in the record to indicate that these employees have any contact with the warehouse employees.

¹⁴ The record indicates that the Employer mistakenly refers in Employer Exhibit 11 to Ms. Johnston as Jennifer Johnston.

worked in the warehouse on three separate occasions, for a total of 15-18 hours. Boucher has only worked in the warehouse on one occasion in 2001, for an unspecified number of hours.¹⁵

Wages, hours, and benefits

Warehouse employees and customer service employees are salaried, non-exempt, while production employees, including World Parts Center employees, are paid on an hourly basis. Despite the fact that the warehouse employees are salaried, non-exempt, the Employer calculates their wages on an hourly basis, as they are eligible for overtime and a shift differential that is otherwise only available to hourly employees. Warehouse employees receive overtime once they have worked more than 40 hours, while the hourly employees receive overtime after working more than 8 hours. The shift differential for hourly and warehouse employees is the same.¹⁶

The wage review process for warehouse employees is the same as for salaried, non-exempt employees, which allows for an increase of 0-8 percent, depending on performance.¹⁷ Hourly employees, on the other hand, received an across-the-board, non-merit-based 4 percent increase in April 2001.

Like many departments at the Employer's facility, the warehouse is a three-shift operation, operating around the clock. Between fifteen and twenty employees work in the warehouse on the first shift, seven on second shift, and three on third shift. First shift warehouse employees begin as early as 5:00 a.m., depending on overtime, and work until approximately 3:30 p.m. While their starting times may vary from day to day, their closing time is fixed. According to warehouse manager Wallace, it is not uncommon, however, for the various departments throughout the facility to work on different schedules. On average, the warehouse employees work between 52 and 53 hours per week. Employees in World Parts, returns, and customer service work only on first shift, averaging 42-45 hours per week.

Warehouse and hourly employees share many of the same benefits, including number of vacation days, health and dental insurance, life insurance, stock purchase and 401(k) plans, severance plan, bereavement leave, jury duty, adoption benefits, educational assistance, and various other benefits.¹⁸ Warehouse employees, unlike hourly employees, however, are not

¹⁵ The record is not clear as to who supervises the receiving and returns clerks.

¹⁶ The differential is .30¢ for second shift, and .50¢ for third shift.

¹⁷ The review is conducted by the warehouse manager, Brian Wallace, and reviewed by his manager.

¹⁸ The Employer's 2001 Holiday Schedule lists eleven holidays. The parties differed as to whether warehouse, and not production employees, were required to work on two of these days, Rhode Island Victory Day and Columbus Day. The evidence indicates that both production and warehouse employees are sometimes called upon to work on those holidays. During 2001, warehouse employees did not work on Rhode Island Victory Day (August 13), while approximately twenty-two production employees did. During the year 2000, thirteen warehouse employees and eight production employees worked on Rhode

permitted to take vacation at the end of the month or the end of the quarter. They tend to be assigned more mandatory overtime during those periods, as well. In addition, salaried, non-exempt employees, including the warehouse employees, receive different short-term disability, long-term disability, and pension benefits than hourly employees. Finally, while hourly employees receive no sick days, warehouse and other salaried, non-exempt employees are compensated for five sick days.

Warehouse employees request permission to take vacation by filling out a form and submitting it to Ron Crompton, the warehouse day supervisor. With limited exceptions, no more than four warehouse employees are permitted to take vacation during the same week. Crompton posts a listing of approved vacations for the warehouse employees. The list is posted above the timeclock in the warehouse. Vacation times for non-warehouse employees are not posted in the warehouse. Crompton also advises employees of scheduling changes, may request that they work on a holiday, and approves their requests to take a day off. Finally, if a warehouse employee has requested time off that he later decides he does not want to take, he can swap with another warehouse employee, subject to Crompton's approval.

Employees throughout the East Greenwich facility share two common parking lots and multiple restrooms. In addition, all employees have access to a cafeteria where vending machines are located. Warehouseperson Antonio Lima testified, however, that while he goes to the cafeteria during his break to get coffee, he was told by a manager that he was not permitted to remain in the cafeteria. The Employer disputes this. Lima further testified that he and other warehouse employees eat their lunch in the warehouse or in their cars.

All employees are required to wear safety glasses while in the manufacturing part of the facility, but employees are not required to wear safety glasses in the warehouse or on the second floor mezzanine. All employees must wear steel-toed shoes in the facility. In addition, all employees are required to attend monthly communication meetings in the cafeteria. At the July 2001 communication meeting, Jim Finley, the division group president, addressed the employees, and Jerry Linzey, the plant manager, fielded questions.¹⁹

Pursuant to the Employer's job posting system, when a job opening occurs, the Employer first seeks to fill the position with an employee already working in the department that has the vacancy. If no employee within the department is interested, the position is posted companywide on bulletin boards in each of the departments. Employees apply for the position by writing their name on the job posting form. The Employer begins interviewing applicants according to plantwide seniority, beginning with the most senior employee. The Employer continues to interview applicants, by seniority, until it identifies a qualified applicant.

Island Victory Day (August 14), and only four production employees worked on Columbus Day (October 9).

¹⁹ The record is unclear as to whether Finley routinely leads these meetings, or whether they are typically led by someone else.

Although the East Greenwich facility has multiple entrances, warehouseperson Antonio Lima testified that he and the other warehouse employees enter and exit through a doorway at the rear of the building, which opens into the warehouse. The Employer has a centralized computer timeclock system called Shop View with approximately ten machines located throughout the facility, including near the rear entrance to the warehouse. All hourly employees swipe cards through the machines to punch in and out. Warehouse employees, despite being salaried, non-exempt employees, also are required to swipe cards through these machines. Exempt and other non-exempt salaried employees are not required to swipe. Lima testified that the warehouse employees swipe their cards at the machine near the rear entrance to the warehouse. The Employer maintains that because the system is centralized, there is no requirement that warehouse employees swipe their cards at any particular location.

Transfers and interchange

Since 1992, five employees have transferred (on a permanent basis) from other departments at the Employer into the warehouse. In that time period, two employees have transferred out of the warehouse into other departments within the facility.²⁰ Both of these transfers took place in 2000.

The Employer's director of human resources, Pat Tod, testified that she was not aware of any instance in which a warehouse employee transferred on a temporary basis into another department within the facility. She acknowledged that the Employer has a temporary agency located in its building and that it constantly uses temporary employees, including in the warehouse.

The record is devoid of any evidence that employees in other departments substitute for warehouse employees in their absence, or vice versa. The Employer provided general testimony that production employees occasionally work in the warehouse.²¹ The only specific testimony provided in that regard, however, involved the aforementioned employees in the World Parts Center and customer service center, as well as the receiving and returns clerks. In addition, warehouse employees do occasionally assist the receiving clerks²² helping to unload trailers on the receiving docks

Supervisors from other departments come into the warehouse to check on discrepancies in piece counts that they may find. In addition, Warehouse Manager Wallace testified that he

²⁰ It appears that these transfers were into the World Parts Center and customer service.

²¹ It appears from the record that prior to August 2000, Phillip Duquette, then an employee in World Parts, worked in the warehouse on various occasions. In August 2000, he became a supervisor in the staples department and, since that time, he has only worked in the warehouse on one occasion, in August 2001. Similarly, Sam Perry, planning, sales, and inventory manager, also works in the warehouse on an unspecified basis. Since both would be statutorily excluded from the unit due to their supervisory or managerial status, the extent of interchange involving Duquette and Perry is irrelevant.

²² Plant manager Linzey testified that the receiving clerks also distribute the product.

sometimes pages other supervisors (using the Employer's paging system) to let them know that they have packed something incorrectly. Supervisors from other departments sometimes speak to warehouse employees who are involved in unsafe conduct, such as driving the train too quickly. Wallace also speaks to his employees about such matters when he learns of them. Supervisors from other departments may also communicate with warehouse employees to prioritize pickups. Finally, Wallace testified that, on one occasion, George Mayes, the director of operations, sent employees, including warehouse employees, home after the facility lost power in a thunderstorm between the second and third shifts. Wallace was not working at the time.

Plant manager Linzey testified that he interacts with warehouse employees under a number of circumstances. If the warehouse workload is high, he assists in transferring employees from production to the warehouse. In addition, warehouse employees may approach Linzey, or someone on his staff, regarding concerns about such matters as power or ventilation at the facility and plant policies. At times, these employees approach Linzey directly; other times, they have already spoken with Wallace and are seeking a second opinion.

ANALYSIS

According to the standard set forth in Bartlett Collins Co.,²³

The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative proposals of the parties. See, e.g., Overnite Transportation Co., 331 NLRB No. 85 slip op. at 2 (2000); NLRB v. Lake County Assn. for the Retarded, 128 F.3d 1181, 1185 fn. 2 (7th Cir. 1997). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., R & D Trucking, 327 NLRB 531 (1999); and State Farm Mutual Automobile Insurance Co., 163 NLRB 677 (1967). In determining whether the employees possess a separate community of interest, the Board examines such factors as mutuality of interest in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. Ore-Ida Foods, 313 NLRB 1016 (1994). It is well settled that the unit need only be an appropriate unit, not the most appropriate unit. Morand Bros. Beverage Co., 91 NLRB 409, 419 (1950), enfd. on other grounds 190 F.2d 576 (7th Cir.1951).

I conclude that a warehouse unit, including export and domestic customer service and World Parts Center employees, enjoys a sufficiently distinct community of interest from the Employer's production and maintenance employees to constitute a separate appropriate unit. In

²³ 334 NLRB No. 76 (2001).

this regard, I note that the employees working in the warehouse are physically separated from the production and maintenance employees by a wall; have separate immediate supervision (warehouse manager Wallace and warehouse day supervisor Crompton) from the production and maintenance employees; do not interchange with production and maintenance employees on a temporary basis; have had only minimal permanent transfers between these groups (since 1992, five permanent transfers from other departments into the warehouse, and two transfers out of the warehouse into other departments); and have minimal contact with production and maintenance employees (if material must be expedited through the factory, a warehouse employee and a production employee may work together to load the product onto the train that takes the product to the warehouse; warehouse employees occasionally assist on the receiving docks, helping to unload trailers). See A. Russo & Sons, Inc.²⁴ Under these circumstances, the fact that all employees essentially enjoy similar wages and benefits, work similar hours, may apply for positions in other departments that are posted companywide, and have some contact with supervisors from other departments (supervisors from other departments come into the warehouse to check on discrepancies in piece counts, they sometimes speak to warehouse employees who are involved in unsafe conduct, such as driving the train too quickly; and they may also communicate with warehouse employees to prioritize pickups) is insufficient to require a different result.²⁵

For the reasons discussed below, I conclude further that a unit limited to warehousepersons, as sought by the Petitioner, is also inappropriate. Rather, I find that the export and domestic customer service employees and the World Parts Center employees enjoy such a community of interest with the warehousepersons as to require their inclusion in the smallest unit appropriate here. In this regard, I note that the Board has found that warehouse clericals should be included in a unit of warehouse employees when their duties are integral to the functioning of the warehouse operation. Fleming Foods,²⁶ John N. Hansen Co.²⁷

Customer service employees

²⁴ 329 NLRB 402, 404-405 (1999).

²⁵ In so finding, I conclude that BASF Sytems Division, 222 NLRB 712 (1976), relied upon by the Employer for the proposition that the only appropriate unit in the instant case consists of all production, maintenance and warehouse employees, is distinguishable from the instant situation. Thus, in BASF, unlike the instant case, the integration of functions between the production, maintenance and warehouse or distribution center was extensive. In BASF, warehouse employees received the raw materials used in the manufacturing process, incoming machinery and equipment used by maintenance employees, and supplies. They also unloaded the merchandise and conveyed it to storage sheds or notified the appropriate department of its receipt. In addition, the warehouse employees in BASF delivered the raw materials directly to the production areas. In performing these functions, they had frequent contact with production and maintenance employees. In the instant case, no such extensive integration of functions or frequent, consistent contact exists between the production departments and the warehouse.

²⁶ 313 NLRB 948, 949 (1994).

²⁷ 293 NLRB 63, 64-65 (1989).

I conclude that the six export and domestic customer service employees who work in the warehouse perform duties characteristic of plant clericals and should, therefore, be included in the bargaining unit with the warehouse employees. These customer service employees work in office cubicles that are located in the warehouse. Most of their time is spent processing and billing customer orders and preparing them to be picked up by warehouse employees. They perform the bulk of their work at desks equipped with computers and telephones. In addition, they spend up to forty-five minutes per day, on average, in the warehouse picking and packing small orders, and up to seven hours, at the end of the month, piece picking, scanning packages on the UPS line, and loading them into a trailer.²⁸ Like the warehousepersons, they are salaried, non-exempt, and their direct supervisor, Debbie Carpenter, reports to Wallace, the warehouse manager.

The fact that an employee works in an office area does not, in and of itself, preclude that employee's inclusion in a warehouse unit.²⁹ In determining whether such an employee is a plant clerical who should be included in a warehouse unit, the Board typically looks at the extent of the employee's participation in the warehouse order-flow process, the physical proximity of his or her work to the warehouse, the extent of his or her daily contact with warehouse employees, common supervision, and the extent to which the employee's fringe benefits and other terms and conditions of employment resemble those of warehouse employees.³⁰

In John N. Hansen Co.,³¹ the Board overruled the challenge to the ballot of an employee, Downing, whom the ALJ had found to be an office clerical.³² Downing, who had no job title, performed duties integral to the functioning of the warehouse operations, including initiating the workflow, preparing merchandise picking tickets, obtaining and providing routing information to warehouse employees, shipping merchandise overseas, tracing lost merchandise, and preparing COD's. In performing these duties, she also had frequent face-to-face contact with warehouse employees. The Board determined that Downing shared a close community of interest with the warehouse employees based on her integral participation in the warehouse order-flow process, the proximity of her work area to the warehouse, her daily contact with warehouse employees, and the common supervision and similar fringe benefits and other terms and conditions of

²⁸ Kristen Johnston, now a customer service representative, transferred to that position from the warehouse.

²⁹ Id. at 64.

³⁰ Id.

³¹ *Supra.*

³² The stipulated unit in that case consisted of "all full-time and regular part-time warehouse persons, shipping and receiving clerks, forklift operators, equipment operators, order fillers and packers," but excluding salespersons, office clerical employees, supervisors and guards.

employment that she shared with warehouse employees.³³ On these facts, the Board concluded that Downing's duties were characteristic of those performed by a plant clerical appropriately included in a warehouse unit.

Similarly, in the instant case, the export and domestic customer service employees who work in the warehouse perform duties integral to the functioning of the Employer's warehouse operations based on their participation in the order-flow process. Accordingly, and in view of their close proximity to the warehouse employees; routine contact; shared general supervision;³⁴ and similar wage structure, fringe benefits, and other terms and conditions of employment, I find that these export and domestic customer service employees share a sufficiently close community of interest with the warehouse employees so as to require their inclusion in the warehouse unit.

World Parts Center

I further conclude that the 7-10 World Parts Center employees who work in the warehouse must also be included in the unit as plant clericals in light of the close community of interest they share with the warehouse employees. The World Parts Center employees are primarily responsible for handling repair orders. Although, unlike warehouse employees, they are paid on an hourly basis, both they and the warehouse employees are required to swipe a timecard upon beginning and ending their shifts. Although they do not face end-of-month deadlines like the warehouse employees, they are consistently called upon at the end of the month, for approximately 5-6 hours, to assist in the warehouse performing essentially the same work as the customer service representatives do when they assist in the warehouse.³⁵ As hourly employees, the World Parts Center employees share many of the same benefits and working conditions as warehouse employees.³⁶ Accordingly, I find that the World Parts Center employees must also be included in the warehouse unit.

Receiving Clerk and Returns Clerk

Finally, I conclude that the receiving and returns clerks do not share a sufficient community of interest with the warehouse employees to require their inclusion in the unit. Unlike the customer service and World Parts Center employees, the receiving and returns clerks

³³ The Board reached this conclusion despite the fact that Downing spent much of her time at her desk, using a computer terminal, typewriter, and adding machine, and performed no physical work in the warehouse.

³⁴ See Sears Roebuck and Co., 220 NLRB 1224 (1975) (finding community of interest in warehouse unit among employees with different immediate supervisors who report directly to same manager).

³⁵ The record indicates that Ray Fogarty, group leader in the World Parts Center, transferred to that position from the warehouse.

³⁶ Although the World Parts Center employees and warehouse employees are separately supervised, a lack of common supervision, in and of itself, is not dispositive in determining community of interest. Mid-State Distributing Co., Inc., 276 NLRB 1511, 1561 (1985) (Smith).

are not physically situated within the warehouse. Their contact and interchange with warehouse employees is occasional and, more often than not, merely incidental to the performance of their regular job functions.³⁷ Their primary function, unloading trucks on the receiving docks and distributing the product, is as related to the functioning of the manufacturing operation as it is to the functioning of the warehouse.

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time warehousepersons, senior warehousepersons, export and domestic customer service employees, and World Parts Center employees, employed by the Employer at its East Greenwich, Rhode Island facility, but excluding all other employees, receiving clerks, returns clerks, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION³⁸

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by International Brotherhood of Teamsters, Local 64, AFL-CIO.

LIST OF VOTERS

³⁷ Although warehouse employees occasionally assist the receiving clerk on the receiving docks, the evidence of interchange is insufficient to justify the inclusion of the receiving clerk in the unit.

³⁸ As I have directed an election in a unit larger than that sought by the Petitioner, the Petitioner will be permitted to withdraw its petition without prejudice upon written notice to me within 10 days from the date of this decision or, if applicable, from the date the Board denies any request for review of the unit scope findings in this decision.

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc.³⁹; NLRB v. Wyman-Gordon Co.⁴⁰ Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. North Macon Health Care Facility.⁴¹ In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before October 10, 2001. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by October 17, 2001.

/s/ Rosemary Pye

Rosemary Pye, Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 3rd day of October, 2001.

440-1760-2460
440-1760-6720
440-1760-6780

³⁹ 156 NLRB 1236 (1966).

⁴⁰ 394 U.S. 759 (1969).

⁴¹ 315 NLRB 359 (1994).